

**Letter of Findings Number: 04-20130210**  
**Sales and Use Tax**  
**For Tax Year 2010**

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**ISSUE**

**I. Sales and Use Tax—Crushed Rock Purchases.**

**Authority:** IC § 6-2.5-5-13; IC § 6-8.1-5-1; IC § 6-2.5-2-1; IC § 6-2.5-3-2; [45 IAC 2.2-3-4](#).

Taxpayer protests the imposition of tax on four crushed rock purchases.

**STATEMENT OF FACTS**

Taxpayer is an Indiana business. As the result of an investigation, the Indiana Department of Revenue ("Department") determined that Taxpayer had not paid sales tax on some taxable purchases of tangible personal property during the tax year 2010. The Department therefore issued proposed assessments for tax and interest. Taxpayer protests the imposition of the proposed assessments. An administrative hearing was held and this Letter of Finding results. Further facts will be supplied as necessary.

**I. Sales and Use Tax—Crushed Rock Purchases.**

**DISCUSSION**

Taxpayer protests the imposition of tax on four crushed rock purchases during the tax year 2010. Taxpayer argues that the rock was used in the construction of a cellular tower site and should therefore be exempt under IC § 6-2.5-5-13. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Sales tax is imposed by IC § 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Use tax is imposed under IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

[45 IAC 2.2-3-4](#) further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is used, stored, or consumed in Indiana, use tax is due unless sales tax was paid at the time of the transaction.

Taxpayer argues that its purchases of the rocks should be exempt under IC § 6-2.5-5-13 which states:

Transactions involving tangible personal property are exempt from the state gross retail tax, if:

(1) the property is:

(A) classified as central office equipment, station equipment or apparatus, station connection, wiring, or large private branch exchanges according to the uniform system of accounts which was adopted and prescribed for the utility by the Indiana utility regulatory commission;

(B) mobile telecommunications switching office equipment, radio or microwave transmitting or receiving equipment, including, without limitation, towers, antennae, and property that perform a function similar to the function performed by any of the property described in clause (A); or

(C) a part of a national, regional, or local headend or similar facility operated by a person furnishing video services, cable radio services, satellite television or radio services, or Internet access services; and

(2) the person acquiring the property:

(A) furnishes or sells intrastate telecommunication service in a retail transaction described in [IC 6-2.5-4-6](#); or

(B) uses the property to furnish:

(i) video services or Internet access services; or

(ii) VOIP services.

Taxpayer argues that the rock is necessary to be able to create an access road and parking lot for the telecommunication tower site. The materials may be necessary to access the site, but the rock does not fall into

any of the categories listed in the telecommunications exemption statute.

Taxpayer also argues that its customer is in the telecommunications industry and that the telecommunications site in question was to be used for both intrastate and interstate calls. The Department notes that, even if Taxpayer's customer had purchased the rock instead of Taxpayer, the rock is not one of the listed categories of exempt equipment found under IC § 6-2.5-5-13.

Taxpayer also argues that the use of the rock is absolutely required by its customer and that the rock is an integral part of the overall project. Additionally, Taxpayer argues that it has been audited twice before and that the issue of sales and use tax on the rock has never been an issue. The Department notes that the requirement by a customer and the necessity of using the rock to access the site are not factors found under IC § 6-2.5-5-13. Only the listed categories of tangible personal property are relevant to exempt status. Also, the fact that the Department may not have imposed sales and use tax on the purchase of rock in previous audits does not infer exempt status on such purchases. As a result the Taxpayer has not met its burden to prove proposed assessments wrong, as provided by IC § 6-8.1-5-1(c).

#### **FINDING**

Taxpayer's protest is respectfully denied.

*Posted: 10/30/2013 by Legislative Services Agency*  
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